



The State of New Hampshire
Department of Environmental Services



Michael P. Nolin
Commissioner

March 25, 2005

Fermina Salas
359 Broadway Street
Lawrence, MA 01841

**NOTICE OF DECISION
ADMINISTRATIVE FINE
DOCKET NO. AF 04-112
(AIR RESOURCES DIVISION)**

Dear Ms. Salas:

As you are aware, by Notice of Proposed Administrative Fine No. AF 04-112 issued December 17, 2004, the New Hampshire Department of Environmental Services Air Resources Division ("DES") sought administrative fines totaling \$100 against Fermina Salas for alleged violations of RSA 141-E, by willfully submitting false or fraudulent information on or with an application to certify Ms. Fermina F. Salas as a NH asbestos abatement worker.

Pursuant to RSA 141-E:16, and based on my review of the evidence presented at the hearing held on this matter on March 14, 2005, I have concluded that a fine of \$100 is justified as set forth below:

This decision is based on the following findings of fact:

1. The Department of Environmental Services, Air Resources Division, is an administrative agency of the State of New Hampshire, having its principal office at 29 Hazen Drive, Concord, NH.
2. Fermina Salas is an individual having a mailing address of 359 Broadway Street, Lawrence, MA 01841.
3. On July 21, 2004, the Division received an application from the Labor Source Corporation to certify Ms. Fermina F. Salas as a NH asbestos abatement worker. See Hearing Exhibit 1.
4. On July 22, 2004, the Division reviewed the application. The training certificate submitted with the application shows completion of an 8-hour "Asbestos Refresher for Workers – Spanish" course on June 25, 2004 at the Lawrence Training School, Inc., Lawrence, MA 01841. The original application and training certificate indicates completion of an "initial 32-hour asbestos worker training course in June of 2003.
5. The refresher course training certificate submitted by Ms. Salas was compared to other certificates received from the Lawrence Training School. The type of font and the course date(s) were different from others received. The name of the President/Director of Training and school

address were also different. The training date indicated that the refresher course was completed on a Friday. All of the refresher courses for Lawrence Training School are customarily completed on Saturdays. See Hearing Exhibit 1 and 3.

6. On July 22, 2004, Division personnel requested that Lawrence Training School provide the course rosters of any asbestos training classes completed in June 2004.
7. The course roster received from Lawrence Training School lists students attending asbestos refresher and initial asbestos courses in June 2004. The name of Fermina Salas did not appear on any of the course rosters for June 2004. See Hearing Exhibit 2.
8. The training certificate submitted by Ms. Fermina Salas with her application dated July 19, 2004, which she certified to be true, was false or fraudulent.
9. A Notice of Proposed Fine setting out the allegations and violations was sent to Fermina Salas on December 17, 2004. The Notice included a notice that a hearing on this matter was scheduled for Monday, March 14, 2005, at 2:30 pm in Room C-110 of the DES offices at 29 Hazen Drive in Concord, NH.
10. Ms. Salas apparently signed the blue appearance form, dated it January 13, 2004, and returned it to the DES Legal Unit. She received fair and adequate notice of the hearing, but elected not to appear at the hearing.
11. Based on the evidence presented at hearing on March 14, 2005, the Division has proved by a preponderance of evidence that Fermina Salas has violated New Hampshire Administrative Rule He-P 5008.07(b)(2) by willfully submitting false or fraudulent information on or with an application.
12. The proposed fine of \$100 is reasonable and supported by the evidence.

Rulings Of Law

1. The Laws of NH 2004, Chapter 257 transferred the authority for regulating asbestos licensing and certification procedures pursuant to RSA 141-E and He-P 5000 to the Department of Environmental Services ("DES"), effective July 1, 2004.
2. RSA 141-E authorizes the Commissioner of the DES to regulate and license any contractor, employer, or individual who engages in asbestos abatement activities or activities involving the disturbance of asbestos at asbestos disposal sites.

3. It is a violation of New Hampshire Administrative Rule He-P 5008.07(b)(2) to willfully submit false or fraudulent information on or with an application.
4. New Hampshire Administrative Rule He-P 5009.03(b)(1) specifies a fine of \$100 for a violation of He-P 5008.07(b)(2).

The \$100 fine shall be paid within 30 days of the date of the decision. Fine payments shall be by certified check or money order payable to "Treasurer-State of NH" and sent to the attention of the Legal Unit, DES/Office of the Commissioner, PO Box 95, Concord, NH 03302-0095.

Any party aggrieved by this decision may file a motion for reconsideration within 30 days of the date of this decision, in accordance with NH RSA 541 and Env-C 206 (copy enclosed).

COMMISSIONER OF ENVIRONMENT SERVICES

By:  **COPY**
Michael J. Walls, Presiding Officer

cc: Michael P. Nolin, Commissioner
Harry T. Stewart, P.E., Director, Water Division
Gretchen R. Hamel, Administrator, DES Legal Unit
Kerry D. Barnsley, DES Legal Unit
Rick Schofield, DES WD
Public Information Officer, DES PIP

PART Env-C 206 MOTIONS FOR RECONSIDERATION

Env-C 206.01 Purpose. The rules in this part are intended to supplement any statutory provisions, such as RSA 541, which require or allow a person to request reconsideration of a decision of the department prior to appealing the decision. These rules do not create the right to request reconsideration of a decision where it does not otherwise exist under law.

Source. #6960, eff 3-25-99

Env-C 206.02 Applicability. The rules in this part shall apply whenever any person has a right under applicable law to request a reconsideration of a decision prior to filing an appeal of the decision with the applicable court or council having appellate jurisdiction.

Source. #6960, eff 3-25-99

Env-C 206.03 Time for Filing. As specified in RSA 541:3, any motion for reconsideration shall be filed no later than 30 days after the date the decision that is the subject of the motion was issued.

Source. #6960, eff 3-25-99

Env-C 206.04 Filing.

(a) Any person wishing to request reconsideration of a decision of the commissioner shall file the original and 2 copies of a motion for reconsideration at the following address:

Office of the Commissioner, Enforcement Unit

Department of Environmental Services

6 Hazen Drive

Concord, NH 03301

(b) Any person wishing to request reconsideration of a decision of a division relating to a matter for which the commissioner has delegated the decision-making authority to the division shall file the original and 2 copies of a motion for reconsideration with the director of the division at the following address:

Department of Environmental Services

29 Hazen Drive

Concord, NH 03301

(c) For purposes of this section, a "decision of the commissioner" means a decision that is signed by the commissioner, or by the assistant commissioner on behalf of the commissioner, either alone or in conjunction with a division director, such as an administrative order.

(d) For purposes of this section, a "decision of a division" means a decision that is signed by a division director or other authorized division staff, but not signed by the commissioner or by the assistant commissioner on behalf of the commissioner, such as a decision to issue or deny a permit.

Source. #6960, eff 3-25-99

Env-C 206.05 Format and Content of Motion. The person filing a motion for reconsideration shall provide the following information:

- (a) The exact legal name of each person moving for reconsideration and the residence address or principal place of business of the person;
- (b) A clear and concise statement of the reason(s) why the person believes the decision to be in error;
- (c) A concise and explicit statement of the facts upon which the department is expected to rely in granting relief;
- (d) A clear and concise statement of the specific relief or ruling requested;
- (e) A copy of the decision which is the subject of the motion; and
- (f) Such other information as the party filing the motion deems pertinent and relevant, including sworn written testimony and other evidence that was not available for the hearing.

Source. #6960, eff 3-25-99